

Approved by: Lori L. Doughty
LORI DOUGHTY
Special Assistant United States Attorney

Before: HONORABLE MARTIN R. GOLDBERG
United States Magistrate Judge
Southern District of New York

18 MAG 8237

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UNITED STATES OF AMERICA : MISDEMEANOR
 : COMPLAINT
 :
 -v- : Violation of
 : 18 U.S.C. 113 (a) (4)
ERIC T. GARDNER :
 :
 : COUNTY OF OFFENSE:
 Defendant WESTCHESTER
 :
 - - - - -X
UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK, ss.:

ANTHONY LUCIANO, being duly sworn, deposes and says that he is a Police Officer, assigned to the Department of Veterans Affairs Police Service, Montrose Veterans Administration Hospital, Montrose, New York, which is located in the Southern District of New York, and charges as follows:

COUNT ONE

On or about July 13, 2018, at the Montrose Veterans Administration Hospital, Montrose, New York, within the special maritime and territorial jurisdiction of the United States, in the Southern District of New York, ERIC T. GARDNER, the defendant, unlawfully, knowingly and willfully assaulted another by striking, beating, or wounding such other person, to wit, the defendant hit the victim in the face twice.

(Title 18, United States Code, Section 113(a) (4))

The bases for the deponent's knowledge and for the foregoing charges are, in part, as follows:

1. I am a Police Officer, assigned to the Department of Veterans Affairs Police Service, Montrose Veterans Administration Hospital, Montrose, New York, which is located in the Southern District of New York.
2. Upon information and belief, on or about July 13, 2018, at approximately 3:32 p.m., Ward 15AB Clerk, Terrie Williams, called police operations to report a patient on patient assault that had just occurred with minor injuries to the victim. Officer Warner responded and met with RN Teasia Williams, who stated the Ward clerk, Terrie Williams had been sitting at the ward clerk's desk across from the recreation room. Terrie Williams heard and saw the defendant talking loudly in the recreation room. Terrie Williams called the Nurses Station and then walked closer to the recreation room and observed the defendant standing over someone who was laying on the floor. RN Teasia Williams responded to the recreation room and met the victim, Harry Wright, as he staggered to the recreation room door. The victim was escorted by RN Williams to the Nurses Station for further evaluation. RN Williams stated that the victim told her that the defendant hit him in the mouth twice. The victim was examined by nursing staff and was determined to not be seriously injured.
3. Ward clerk Williams informed Officer Warner that she did not witness the assault take place but only heard and saw the defendant talking loudly to someone on the floor. Ward clerk Williams stated that is when she called the nurses station to alert them something was going on in the recreation room and then got up from her desk and walked closer to the recreation room and motioned for day room staff to come to the recreation room.
4. The victim was interviewed next and told Officer Warner that the defendant had hit him the face two times. Wright was asked to show where the defendant had hit him and indicated that he was hit on the left side of his face

and lips. Wright admitted he was in pain and touched the left side of his face. When asked why the defendant had hit him, Wright indicated he did not know. RN Williams informed Officer Warner that Wright could not write a statement.

5. The defendant was interviewed next and Officer Warner began by asked the defendant if anything had happened in the recreation room. The defendant asked what he meant. Officer Warner asked if anyone had gotten hurt in the recreation room in the last hour or so and the defendant said that Wright might have hurt himself. When asked how Wright had got hurt, the defendant stated that Wright was sitting next to him on the couch in the recreation room and Wright had leaned over to pick up some dirty Cheetos off the floor and the defendant stated he attempted to push Wright's face away from the Cheetos but Wright kept leaning forward and hit his face against the defendant's hand. The defendant stated it was an accident and Wright was not supposed to eat dirty Cheetos off the floor. When asked if he hit or tried to hit Wright with his hand but the defendant stated that Wright fell forward and his face against the defendant's hand and Wright might have hit the defendant's leg with his face too. When asked to make a written statement, the defendant refused stating, "I told you what happened."

6. Officer Warner had observed a mounted video camera in the corner of the recreation room and believed it may have recorded the incident. Officer Warner was able to retrieve the video footage which showed the victim sitting on the couch in the center of the recreation room while the defendant was sitting in a chair against the front of the building exterior wall. At 3:27 p.m., Wright gets up from the couch and walks away from the defendant toward a number of Cheetos which had been spilled on the floor two feet from the interior wall which separates the recreation room from the main hallway on the opposite side of the wall. Wright then squats and begins picking up the Cheetos off the floor. The defendant takes notice of Wright and points at him and tells him something. There is no sound on the video but the defendant appears to be telling something to Wright. At 3:28 p.m., the defendant stands up and walks across the room toward Wright without


aid of his walker. Upon reaching Wright, with a clenched fist, the defendant quickly strikes Wright in the left side of his face with two vigorous backhand punches. Wright then topples over onto the floor and the defendant then leans over the now prone Wright and raised his clenched fist and threatens Wright with the fist. Officer Warner requested the video footage be downloaded and saved with the filing of the report which it was.

7. On July 16, 2018, at approximately 10:42 a.m., Officer Warner and Inv Luciano went to ward 4CD where the defendant had been transferred after the incident and interviewed him again. The defendant was asked again to explain what happened on July 13 in the recreation room. The defendant stated he was alone with Wright in the recreation room when he observed Wright eating Cheetos off the floor. The defendant said he told Wright not to eat that it was poison. The defendant said he tried to knock the Cheetos out of Wright's hand. The defendant said he slapped them out of his hand and tried to push him away from the area. The defendant said Wright did not fall, he was already on the floor eating the Cheetos. The defendant said he slapped Cheetos out of Wright's hand and then stepped between Wright and the Cheetos. The defendant said when a staff person came in he informed the staff person that Wright was eating dirty stuff off the floor. The defendant denied hitting Wright, other than swatting Cheetos out of Wright's hand. The defendant again refused to make a written statement.

8. On August 9, 2018, the defendant was discharged from Ward 4CD and was taken into custody by Inv Luciano and PO Giebler and took him to police operations for arrest and processing.

9. Defendant was issued a United States District Court Violation Notice for assault (DCVN Number 6745442/SY53) and was released to the New York State Police for other active warrants.

WHEREFORE, deponent prays that the above-named defendant be imprisoned or bailed, as the case may be.

A handwritten signature in dark ink, appearing to read 'AL', written over a horizontal line.

ANTHONY LUCIANO
VA Police Service

Sworn to before me this
27th day of September, 2018

A handwritten signature in dark ink, appearing to read 'MG', written over a horizontal line.

HONORABLE MARTIN R. GOLDBERG
United States Magistrate Judge
Southern District of New York